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## Assembly Committee on Judiciary Testimony on Assembly Bill 933 February 8, 2022

Thank you Chairman Tusler, and committee members for hearing Assembly Bill 933, relating to bail for criminal defendants who have previously failed to comply with a condition of his or her release for the present offense. I would also like to thank Sen. Kooyenga for his leadership in drafting this bill, along with his continued service in America's armed forces. It is my understanding he cannot be here today because of those obligations, and I wish him and his fellow service members the very best.

This bill is a small, simple fix to one of the problems I've heard echoed by law enforcement officers and attorneys who practice criminal law. In short, they are frustrated that defendants who have violated the terms of their pretrial release face little or no consequences.

This legislation is very simple: under the bill, a judge may not release a defendant without bail or on an unsecured bond if the defendant has previously failed to comply with a condition of his or her release for the present offense.

It is not our goal to hold all persons accused of a crime before trial, for a simple inability to make bail.



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However, if someone is not currently complying with terms of their release, it stands to reason they pose more of a flight risk. Under these circumstances, it is not unreasonable to demand that someone have *some* skin in the game.

Finally, this legislation does not set a minimum bail amount, just states that there must be some bail. It's still within the judge or court commissioner's discretion to set the appropriate amount.

In sum, this is a reasonable regulation designed to ensure court appearances and compliance with the terms of pretrial release.

Thank you for your time and attention. I'm happy to answer any questions you may have.



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Assembly Committee on Judiciary  
Tuesday, February 8, 2022  
Assembly Bill 933

Chair Tusler and members,

Thank you for allowing us to testify on Assembly Bill (AB) 933 which makes changes to require cash bail if an individual violates a condition of pretrial release. The State Public Defender (SPD) appreciates the effort to more narrowly tailor this proposal but remains concerned that the expansion of the use of cash bail will result in an increase in pretrial detention at future risk to community safety.

It is a fundamental principle that individuals accused of committing a crime are presumed innocent until proven guilty. As the U.S. Supreme Court has noted, “[i]n our society social liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” (*United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)). In determining whether to impose pretrial conditions of release under current law, a court first considers whether an individual is likely to appear at future court hearings. A monetary condition of release, bail, may be imposed only if the court finds that there is a reasonable basis to believe it is necessary to ensure the individual’s appearance in court. The court may also impose any reasonable non-monetary condition of release to ensure a defendant’s appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. Courts also have the ability to deny pretrial release from custody to persons accused of certain violent crimes.

In addition, the U.S. Supreme Court ruled in *Stack v. Boyle* ((1951) 342 U.S. 1), that “Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon the standards relevant to the purpose of assuring the presence of that defendant...” In other words, in deciding whether to impose cash bail, a court must take into account the individual circumstances in each case. Read another way, the case law says that courts are required to exercise discretion on what conditions to impose, including cash bail, for pretrial release.

AB 933 removes this discretion from judges by requiring that if a person violates any condition of pretrial release, that the court must impose cash bail or a secured bond. It is also important to consider removing that discretion by considering the significant number of conditions that may be imposed. While some are obvious (no contact with the victim or appear for future court proceedings), there are often conditions that may be competing and set people up to fail. For instance, a condition to find or maintain employment set against having to report for treatment or pretrial services that are only available during working hours. AB 933 treats all conditions of release similarly rather than distinguishing between violations that pose a risk to public safety and those that a violation of which does not warrant the imposition of cash bail.

Again, we appreciate the effort to offer a more tailored proposal regarding changes to cash bail. Assembly Bill 933, however, still includes changes that we believe run afoul of case law and evidence based responses to violations of pretrial release.

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